IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1237 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HIRA LAKHA AAHIR
Versus
STATE OF GUJARAT

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Appearance :
MR AM DAGLI assisted by MR CHIRAG H PAREKH for the Appellant
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for the Opponent

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 23/11/2006

ORAL JUDGMENT

1. The appellant has preferred this Appeal being aggrieved by judgment and order of conviction passed by the learned Additional Sessions Judge and Presiding Officer, 10th Fast Track Court, Gondal, Camp at Dhoraji in

Sessions Case No.4 of 2000 dated 22.06.2006.

The learned Additional Sessions Judge was pleased to convict the appellant for offence under Section 324 of the Indian Penal Code and was pleased to award 1 year R.I., fine of Rs.4,000/- and in default, further 6 months R.I.

The learned Additional Sessions Judge was also pleased to convict the appellant for offence under Sections 37(1) and 135 of the Bombay Police Act and awarded him 4 months R.I., fine of Rs.1,000/- and in default, further 3 months R.I.

The appellant – accused has paid the fine of Rs.4,000/- and Rs.1,000/-.

2. Learned advocate Mr.Ashish M.Dagli, for Mr.Chirag H.Parekh, learned advocate for the appellant submitted that the incident had taken place on 05.09.1998 at about 08.30 PM; that the complainant and the accused – appellant are distantly related to each other; that the accused was having some grievance against the complainant as his father had intervened in a dispute pertaining to, 'right of way' with one Shri Raidhanbhai Nathabhai, who is examined as PW10 at Exh.23 in this Case. The accused did not lime the intervention of the father of the

complainant which had brought about a compromise.

3. Learned advocate for the appellant submitted that after the incident of 1998, till date, no other incident of this type has taken place, not only that, even prior to this incident, there is no such incident to the credit of the accused – appellant herein. He submitted that during the trial, the appellant was on bail and he has not misused his liberty. After the conviction by judgment and order dated 22.06.2006, the appellant – accused has surrendered and by now, he is in jail for about 4 months. Thus, the appellant – accused has already undergone the sentence awarded for offence under Sections 37(1) and 135 of the Bombay Police Act.

The learned advocate for the appellant submitted that besides, the appellant is having two minor children, viz. daughter aged 16 years and son aged 12 years.

4. The learned advocate submitted that the appellant is an agriculturist and he is not involved in any criminal activity. He submitted that except this spontaneous act of attacking the complainant for which he is convicted and is awarded sentence aforesaid, he has no other antecedent. He submitted that an application Exh.64 was filed praying for grant of benefits flowing from The Probation of of Offenders Act, 1958 and Section 360 of

the Criminal Procedure Code.

The learned advocate for the appellant submitted that in this application at Exh.64, all these grounds were set out, including that the appellant is a poor person and is the sole bread earner of his family. There is nobody else to support his family. The learned advocate submitted that at the time of initial arrest also, the appellant had remained in jail for about 8 days. He is aged about 48 years. It was mentioned in the application that after the appellant was released on bail in 1998, no untoward incident is reported against him. He has not caused any harassment, either direct or indirect, to any of the witnesses; that if the benefit of probation is given to him, he will see to it that he remains away from any criminal activity and hence, he should be released by taking into consideration the period he has undergone at the time of initial arrest.

5. Mr.Dagli, learned advocate for the appellant submitted that the learned Sessions Judge while rejecting application Exh.64, has not set out any reason in so many words, but if the order is perused, it appears that the learned Sessions Judge was of the opinion that immediately on conviction, the benefit of probation is not required to be granted as that will amount to allow

the appellant to go without undergoing any sentence. The learned advocate submitted that now that the appellant has undergone 4 months, it is time to grant him benefit of The Probation of Offenders Act, 1958. The learned advocate submitted that out of fine amount of Rs.5,000/- paid by the appellant - accused, Rs.3,800/- is ordered to be paid to the complainant by way of compensation under Section 357 of the Criminal Procedure Code. Thus, the complainant stands compensated for the injury sustained by him for which he was not required to undergo a long treatment.

6. Taking into consideration the submissions made by the learned advocate for the appellant, contents of Section 360 of the Criminal Procedure Code, Section 4 of the Probation of Offenders Act, circumstances of the case, nature of the offence, the character of the offender, time lag and the fact that there is no untoward incident has taken place during this entire period, it is deemed fit that the benefit of The Probation of Offenders Act, 1958 is granted.

The appellant-accused is directed to be released on probation of good conduct on his entering into a bond in the sum of Rs.5,000/- (Rupees Five Thousand Only) for a period of one year, to appear and receive sentence as and

when called upon during the period of one year. Fine is already paid by the appellant-accused. That part of the sentence is not disturbed. The Appeal is allowed. Direct service is permitted.

(RAVI R.TRIPATHI, J.)

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